



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/154488

PRELIMINARY RECITALS

Pursuant to a petition filed December 28, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a telephonic hearing was held on March 18, 2014. Because petitioner's phone was not working during the entirety of that hearing, the hearing was continued on April 10, 2014. Because some facts in that hearing were not made clear, another hearing date was scheduled. That hearing was held on May 15, 2014.

The issue for determination is whether petitioner was overpaid FS.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Desarae Robinson, OIG Fraud Investigator
Public Assistance Collection Unit
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Wisconsin from at least April 2011 – May 2013 and was a recipient of FS.
2. Petitioner received FS from at least April 2011 – May 2013 for a household of 3.

3. Petitioner failed to report all of her earned income during the period from at least April 2011 – May 2013. On July 16, 2013 the agency discovered this error.
4. On November 12, 2013 the agency issued three notices of decision to petitioner stating that she was overpaid FS from June 2011 – May 2013 (claim # [REDACTED], [REDACTED] and [REDACTED]) in the total amount of \$12,624 due to client and non-client error. Exhibits 13-15.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); See also FS Handbook, §7.3.1.2, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

Here, the agency argues that the petitioner did not report all of her income, and therefore she received more FS than she was eligible to receive. Under FS rules, an FS household needs to report increased income only if the new income causes total household income to rise above 130% of the federal poverty level. FS Handbook, §6.1.1.2. 130% of poverty for a one-person household in April 2011 was \$1,984. FS Handbook, §8.1.1 (version #11-01). The agency showed that she received more income than the 130% level in April 2011. See Exhibits 4 and 5. The FoodShare Wisconsin Handbook (FSH) states that she therefore had to report in May 2011 that her household income exceeded 130% of the FPL:

6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units [i.e., household's which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% (8.1.1) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...
FSH, §6.1.1.2.

This follows Federal law which directs that States may:

“...require households with income that are assigned 6-month or longer certification periods to *report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline.*” 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

According to the evidence, the income for Petitioner's household exceeded 130% of the FPL for the time periods in question.

Petitioner did not argue with the computations of her income or the overpayment calculations. She offered some vague testimony about how self-employment was reported and that she complied with what the agency asked of her. I assume this goes to whether or not it was her error or the agency's error in how her FS were originally calculated. However, the agency showed that what she was paid as a provider was dramatically different than what she stated her income was on her tax forms. Petitioner did not explain this away. For example, her 2011 tax forms show her gross income as a child care provider was \$9023, yet the State printout showing what she was paid by Wisconsin Shares in 2010 shows a total of \$33,496.91 for 2010. The discrepancy shows up again in reporting her income for 2011. It would have been up to

petitioner to explain this discrepancy but she did not. It would have been up to petitioner to report all of her income as a provider to the agency when she was renewing her benefits as well. She did not. Accordingly, I will agree that the overpayment can be amended and coded as client error. The agency did not allege that this was an intentional failure to report income.

Based on the foregoing, I must find that the petitioner was overpaid FS due to client error.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

Petitioner was overpaid FS from June 2011 – May 2013 (claim # [REDACTED], [REDACTED] and [REDACTED]) in the total amount of \$12,624 due to client error.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

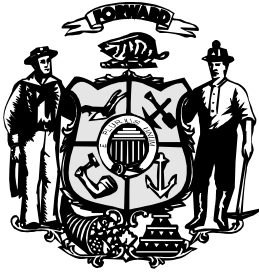
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of May, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 27, 2014.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability